IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.285/2007.

1. Luis Filipe Menezes and anr. ..... Petitioners.

Versus

1. Mr. Elliot Menezes and others. ..... Respondents.

Mr. A. F. Diniz and Mr. E. Furtado Advocate for the petitioners.
Mr. S. D. Lotlikar, Sr. Advocate with Ms. Sapna Mordekar, Advocate for the respondent No.1 to 3.
Mr. M.S. Joshi, Advocate for the respondent No.6.
Mr. R. G. Ramani, Advocate for the respondent No.4.

Coram :- **R. S. MOHITE, J.**

Date : - 28th September/
4th October, 2007.

P.C. :

This petition impugns the judgment and order passed by Civil Judge, S.D., Panaji-Goa on 6.6.2007 on application Exh.D-13 in Spl.C.S. No.49/2007/A rejecting the said application. The said application at Exh. D-13 was filed by the original defendants Nos. 4 & 5 in the suit filed by the plaintiffs, seeking reliefs against the Managers of 3 banks who were defendant Nos. 1,2 and 3 in the said suit.

2. The brief facts of the case are that plaintiff Nos.1 & 2 along with defendant Nos. 4 & 5 are the partners of plaintiff No.3 firm.

The name of the partnership firm is Millennium Auto. The partnership firm was constituted under the deed styled as "deed of reconstitution of partnership" executed by and between the partners on 1.4.2002. The deed provided duration of the partnership. The deed contains arbitration clause. The clause 70 is in the following terms.

> "**<u>Arbitration Clause 70 –</u> All disputes and question in connection with the partnership or other deeds arising amongst the partners or between in all them or the retired partner or the legal representatives of the deceased partner or disabled partner whether during or after the partnership, shall be referred to the Arbitrator mutually agreed by all the partners, or the retired partners or the legal representatives of deceased/disabled partner."**

3. Disputes arose between the 4 partners i.e. plaintiff Nos.1 & 2 on one side and defendant Nos.4 & 5 on the other side. The partnership firm held accounts in 3 banks which have been impleaded (which are impleaded through their managers as defendants No. 1,2 & 3) in the suit filed by the plaintiffs. In view of the disputes having arisen between the partners, defendant Nos. 4 & 5 addressed letters dated 24th April 2007 to the plaintiffs revoking /cancelling/ withdrawing with immediate effect all the power of attorneys and letters of authorities and other documents and deeds etc. of similar nature issued in favour of the plaintiffs. On the same day, i.e. on 24th April, 2007 the

plaintiff addressed letters to the defendant Nos. 1,2 & 3 Banks informing them about the cancellation/revocation/withdrawal of the aforesaid documents and requesting/advising the banks not to permit plaintiffs No.1 & 2 to use any of the power of attorneys/letter of authority/ such documents, deeds etc. On receipt of these letters, the 3 banks in which partnership firm held accounts, disallowed plaintiff Nos. 1 & 2 from operating the accounts.

4. The result was that, plaintiff Nos. 1 & 2, by impleading the partnership firm as plaintiff No.3 filed a Special Civil Suit in the Court of Civil Judge, S.D., at Panaji-Goa. The only main prayer (a) in the suit was as under.

> "For permanent mandatory injunction directing defendant Nos. 1,2 & 3 to permit/allow the plaintiffs to operate the accounts maintained by the plaintiff Nos. 3 & 4 with the defendant Nos. 1,2 &3 for the purpose of running the business of the firm, plaintiff No.3. No relief of any nature whether permanent or interim were sought in the said suit against the defendant Nos. 4 & 5."

5. In this suit, before filing the written statement, on behalf of defendant Nos. 4 & 5, the application at Exh. D-13 came to be filed U/s.8 of the Arbitration Act,1996 saying that a reference be made to the Arbitrator in view of the arbitration clause as contained in the partnership deed. By the impugned judgment and order, for the reasons

which are mentioned in the said order, the said application of defendant Nos. 4 & 5 came to be dismissed and that is how, this petition came to be filed.

6. I have heard all the parties and perused the record and judgments which are cited. The Advocate appearing for the petitioner argued that the prayer for arbitration was made on the footing that actions of the Banks were only in pursuance of letters written by defendant Nos. 4 & 5. These letters had been written because disputes had arisen between the partners of the firm. Since such disputes had arisen, it was incumbent to make an arbitration reference in respect of these disputes to the Arbitrator. It was contended that though the prayer in the suit was sought only against the defendant Banks, essentially the cause of action arose out of the disputes between the partners.

7. The Counsel appearing for the defendants No.4 and 5 and the Counsel appearing on behalf of the defendant No.2, opposed this petition. On behalf of the defendants No.4 and 5 it was contended that no relief had been sought in the suit against the partners. The question involved in the suit was whether the Banks were within their rights to stop the plaintiffs from operating the Bank accounts of the plaintiff No.3 Firm. This was essentially a question to be decided with

reference to the Banking Laws and had nothing to do with the disputes interse between the partners. It was contended that the interse disputes between the partners could only be decided through independent proceedings filed for resolving such disputes. It was contended by the Counsel appearing for the defendants No.4 and 5 as well as the Counsel appearing for the defendant No.2 that the three Banks against whom relief was sought in the suit, were not signatories to the partnership deed which contained arbitration clause. Therefore, the issues in the suit could not be resolved in arbitration proceedings. Strong reliance reliance was placed upon the Judgment of the Apex Court in the case of **Sukanya Holdings Pvt. Ltd vs. Jayesh H. Pandya & Anr.,** reported in 2003(3) ALL MR 325. In paragraph 13 of this Judgment, the Apex Court has observed as follows :

> **" Secondly, there is no provision in the Act that when the subject matter of the suit includes subject matter of the arbitration agreement as well as other disputes, the matter is required to be referred to arbitration. There is also no provision for splitting the cause or parties and referring the subject matter of the suit to the arbitrators."**

In paragraph 16, the Apex Court further laid down as under :

> **" The next question which requires**

> **consideration is-even if there is no provision for partly referring the dispute to arbitration, whether such a course is possible under Section 8 of the Act? In our view, it would be difficult to give an interpretation to Section 8 under which bifurcation of the cause of action that is to say the subject matter of the suit or in some cases bifurcation of the suit between parties who are parties to the arbitration agreement and others is possible. This would be laying down a totally new procedure not contemplated under the Act. If bifurcation of the subject matter of a suit was contemplated, the legislature would have used appropriate language to permit such a course. Since there is no such indication in the language, it follows that bifurcation of the subject matter of an action brought before a judicial authority is not allowed."**

8. In the present case, the entire cause of action arose only because the three Banks stopped the plaintiffs from operating the accounts of the partnership. It may be that this was done because of interse disputes between the partners. The Counsel appearing for respondents No.4 and 5 brought to my attention clause 8 of the partnership deed which provided that the partnership accounts could be operated by signatures of any of the four partners. The real question, therefore, involved in the suit is whether the Banks were within their rights to disallow the plaintiffs from operating the accounts despite

such clause in the partnership deed. It is to be borne in mind that on the date of the filing of the suit the partnership had not been dissolved and was still in existence. To my mind, the cause of action though originating from disputes between the partners, is essentially a cause of action against the three Banks. There is no relief sought in the suit against the partners and the Court has not been called upon to deal with the disputes which had arisen between the partners. This is, therefore, not even a case of split cause of action.

9. On behalf of the petitioner, reference was made to the Judgment of the Apex Court in the case of **Rashtriya Ispat Nigam Ltd. and anr. vs. Verma Transport Co.,** reported in (2006) 2 SCC 275. My attention was drawn to the observations of the Apex Court in paragraph 45 of the Judgment. In paragraph 45 of this Judgment,on facts, the Apex Court distinguished the Judgment of **Sukanya Holdings Pvt. Ltd vs. Jayesh H. Pandya & Anr.,(supra).** It was observed that in the case of S**ukanya Holdings Pvt. Ltd,** a suit was not only for dissolution of the firm was filed, but a different cause of action had arisen in relation whereto apart from the parties to the arbitration agreement, other parties had also been impleaded. In paragraphs 47, it was observed by the Apex Court that the question which arose in **Sukanya Holdings Pvt. Ltd,** did not arise in the case before the Apex Court and the parties before the Apex Court were

parties to the arbitration agreement and the question as regards the jurisdiction of the arbitrator, if any, could be determined by the arbitrator himself in terms of Section 16 of the 1996 Act. In my view, in the present case, since the suit seeks relief only against the Banks, the present case stands on a different footing than the case before the Apex Court in the case of **Rashtriya Ispat Nigam Ltd. and anr. vs. Verma Transport Co. (supra).**

10. In the aforesaid view of the matter, in my view, there is no substance in the petition and the petition is, therefore, dismissed. It is made clear that the observations made in this order are restricted to the issues which arose in this petition and will not be taken into account at the stage of hearing of the suit.

R. S. MOHITE, J.

ssm/SMA